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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

EDIE GOLIKOV, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WALMART INC.,

Defendant.

Case No. 2:24-CV-08211-RGK-MAR

Assigned to Honorable R. Gary
Klausner

**DEFENDANT WALMART INC.'S
REPLY BRIEF IN SUPPORT OF
MOTION TO CLARIFY OR
DECERTIFY CLASSES**

Date: July 28, 2025

Time: 9:00 a.m.

Ctrm.: 850

Action Filed: September 24, 2024

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I. INTRODUCTION

This class action is over. Ms. Golikov’s Opposition was the curtain call.

Ms. Golikov does not cite a single case involving a class representative disqualified by an arbitration clause or class waiver (except for one, which rejected class certification, *see infra* Sect. III(B)). Worse, she ignores the only case law involving another class representative bound by a class waiver, which resulted in a finding of *no subject-matter jurisdiction under CAFA*—a finding made by this very Court. *See Archer v. Carnival Corp. & PLC*, 2021 WL 4798695 (C.D. Cal. May 14, 2021) (Klausner, J.); *Leuenhagen v. Carnival Corp.*, 2021 WL 12311039, at *2 (C.D. Cal. Oct. 27, 2021) (Klausner, J.). The Court found no jurisdiction because, “when a class is certified and the class representatives are subsequently found to lack standing, the class should be decertified and the case dismissed.” *NEI Contracting & Eng’g, Inc. v. Hanson Aggregates Pac. Sw., Inc.*, 926 F.3d 528, 532 (9th Cir. 2019). Having waived class relief and committed to arbitration, Ms. Golikov had no business bringing this class action in the first place.¹

Recognizing the predicament, Ms. Golikov’s counsel ask this Court to revive the class by granting all manner of affirmative relief, e.g., redefinition of the class, substitution of the class representative, amendment of the complaint, and “proper” clarifications. Her gambit fails because (a) “a request for affirmative relief is not proper when raised for the first time in an opposition,” *Smith v. Premiere Valet Servs., Inc.*, 2020 WL 7034346, at *14 (C.D. Cal. Aug. 4, 2020) (collecting cases); and (b) she does not even address the standards for substitution, redefinition, or amendment, nor show the required good cause to modify the scheduling order.

The Court should decline Ms. Golikov’s eleventh-hour excuses and grant Walmart’s Motion. Either of the two options properly before the Court—clarification, or decertification—provides the proper outcome.

¹ Walmart moves to clarify or decertify (Mot. 2), but the Court may consider jurisdiction at any time. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 503 (2006).

1 First, as to **clarification** (Rule 60), Ms. Golikov argues the failure of the
2 named plaintiff's claim does not necessarily result in decertification, citing cases
3 that indicate the mooting of named plaintiffs' claims after class certification does
4 not negate the claims of the class. Opp'n 2–3. But, as noted, she never actually
5 addresses the situation before the Court: The Order did not *moot* Ms. Golikov's
6 claim post-certification, thereby leaving class claims intact; rather, she *never had a*
7 *claim to begin with* because of her arbitration agreement and class action waiver.

8 Second, as to **decertification** (Rule 23(c)(2)), Ms. Golikov essentially ignores
9 the Court's Order compelling her to arbitrate her claims against Walmart and
10 Walmart's cited authorities showing that the Order precludes the class from
11 continuing. She simply restates her prior arguments on her original Motion for Class
12 Certification. Contrary to her assertions (and as further evidence of lack of candor),
13 the Court did not address arbitration issues in its February 27 class certification
14 order (Dkt. 62). To state the obvious, the June 10 arbitration Order matters: Ms.
15 Golikov is atypical and inadequate because she is bound by an arbitration agreement
16 and class action waiver. Her circumstances are the same as an unknown number of
17 class members, and only individualized inquiries can resolve those fact-intensive
18 issues. Plus, those issues exist even for in-store purchasers, an unknown number of
19 whom are equally bound by arbitration and waiver via, *e.g.*, Walmart Pay.
20 Substitution or redefinition do not save her because, as the Court ruled, she is bound
21 by the arbitration clause and class waiver, class counsel caused the current
22 confusion through less-than-forthright representations, and even in-store class
23 members may be bound by the arbitration agreement and class waiver (which will
24 require individualized mini-trials to address). This class action cannot proceed.

25 **II. THE OPPOSITION RAISES A JURISDICTIONAL ISSUE.**

26 At the threshold, Ms. Golikov's Opposition raises more questions than it
27 answers. She cites series of cases for the general proposition that she may be
28 substituted for a new plaintiff, but **none** of those cases address the situation here: a

1 class representative bound to arbitration and a class waiver while a certified class
2 remains. This is because the situation raises fundamental and fatal jurisdictional
3 questions that certainly preclude certification under CAFA.

4 The Ninth Circuit addressed the general problem of a misplaced class
5 representative as to whom the Court could not redress claimed issues in *NEI*, where
6 the court held “that when a class is certified and the class representatives are
7 subsequently found to lack standing, the class should be decertified and the case
8 dismissed.” 926 F.3d at 532. And contrary to Ms. Golikov’s characterization, her
9 pre-filing agreement to arbitrate and waive class treatment is not merely an issue of
10 mootness. As the Ninth Circuit explained, redressability and other standing
11 problems arising “*from the outset of [the] litigation*” require that “certification of the
12 class ‘must be vacated.’” *Id.* at 533 (quoting *Lierboe v. State Farm Mut. Auto. Ins.*
13 *Co.*, 350 F.3d 1018, 1022 (9th Cir. 2003)) (emphasis added); *see also Lidie v. State*
14 *of Cal.*, 478 F.2d 552, 555 (9th Cir. 1973) (motions to intervene may be granted in
15 “mootness situations,” but “where the original plaintiffs were *never qualified* to
16 represent the class, a motion to intervene represents a back-door attempt to begin the
17 action anew, and need not be granted.”) (emphasis added; citations omitted); *Bohn*
18 *v. Pharmavite, LLC*, 2013 WL 12246336, at *2 (C.D. Cal. Oct. 8, 2013) (denying
19 leave to substitute class representative because of counsel’s lack of “diligen[ce] in
20 investigating Bohn’s allegations from the outset;” *cf.* Dkt. 82-5).

21 This Court applied these principles to a situation quite similar to that here—a
22 class representative bound by a class waiver—and found CAFA jurisdiction
23 retroactively absent. *See* Order 3 (“as Plaintiff now admits, this avocado oil was
24 purchased online and is thus subject to the arbitration clause and class action
25 waiver.”). In *Archer*, the Court observed that plaintiffs’ “signing of valid and
26 enforceable class-action waivers” before the start of a case “stripped Plaintiffs of
27 their ability to invoke CAFA jurisdiction *when the TAC was filed.*” 2021 WL
28 4798695, at *2. The Court noted that “post-filing developments,” such as denial of

1 class certification due to failure to meet Rule 23, differ “from determinations of
2 whether ‘federal jurisdiction is absent from the commencement of a case.’” *Id.* at *3
3 (quoting *Polo v. Innoventions Int’l LLC*, 833 F.3d 1193, 1197 (9th Cir. 2016)). The
4 Court reiterated this sound decision in another case brought by passengers of the
5 same cruise ship who also signed class action waivers, “reason[ing] that an
6 enforceable class action waiver meant that Plaintiffs had no right to bring their
7 claims in the first instance, and therefore, they could not properly invoke CAFA
8 jurisdiction, ‘just as a plaintiff with no standing could not invoke federal
9 jurisdiction.’” *Leuenhagen*, 2021 WL 12311039, at *2 (quoting *Archer*, 2021 WL
10 4798695, at *3). Walmart cited these cases; Ms. Golikov ignored them.

11 In contrast to the on-point authorities above, *Ms. Golikov’s inapposite cases*
12 *involve plaintiffs whose initially valid claims became moot after proper*
13 *certification—not, as here, where they were invalid at the outset and did not*
14 *involve waiver- and arbitration-bound class representatives. See Sosna v. Iowa*,
15 419 U.S. 393, 402 (1975) (mooting of plaintiff’s claim over temporal residency
16 requirement for divorce petition did not defeat class certified while plaintiff had
17 valid claim before meeting requirement); *Franks v. Bowman Transp. Co.*, 424 U.S.
18 747, 755–56 (1976) (plaintiff’s claim of discriminatory firing not moot though class
19 representative properly discharged for cause, not on discriminatory basis); *E. Tex.*
20 *Motor Freight Sys. v. Rodriguez*, 431 U.S. 395, 406 n.12 (1977) (reversing
21 certification to plaintiffs failing to seek certification in district court; noting no
22 mootness only where “the initial certification was *proper*” if class certified by
23 district court (emphasis added)); *Bates v. UPS, Inc.*, 511 F.3d 974 (9th Cir. 2007)
24 (class could continue only where plaintiff “had standing at the time of
25 certification”). Ms. Golikov’s catalogue of non-jurisdictional cases likewise do not
26 involve waiver- and arbitration-bound representatives (and some deny substitution).²

27
28 ² *Birmingham Steel Corp. v. Tennessee Valley Auth.*, 353 F.3d 1331 (11th Cir. 2003), involved failure to substitute after the plaintiff filed for bankruptcy. *In re*

1 The only case Ms. Golikov cites that is remotely similar, involving a plaintiff
2 subject to arbitration but not a class waiver, found the “court abused its discretion to
3 the extent it certified classes . . . that include[d] employees who signed class action
4 waivers.” *Avilez v. Pinkerton Gov’t Servs., Inc.*, 596 F. App’x 579, 579 (9th Cir.
5 2015). Her other cases, Opp’n 3–5, do not involve arbitration or waiver.

6 **III. THE REQUESTS MADE IN OPPOSITION SHOULD BE DENIED.**

7 Ms. Golikov’s affirmative requests for relief fail for multiple reasons.

8 *First*, Ms. Golikov asks the Court to grant affirmative relief—clarification of
9 the prior order, modification of the class definition, and substitution of a class
10 representative—through her Opposition brief, despite having since June 10 to make
11 a proper motion. Opp’n 3–8, 12–13, 15. But “ a request for affirmative relief is not
12 proper when raised for the first time in an opposition.” *Smith*, 2020 WL 7034346, at
13 *14 (collecting cases); *e.g. McSherry v. City of Long Beach*, 2004 WL 7332872, at
14 *3 n.4 (C.D. Cal. Jan. 26, 2004) (Klausner, J.) (denying request made in opposition).

15 *Second*, if a plaintiff seeks to amend the class definition, the complaint, or
16 parties after the deadline set in the scheduling order, Dkt. 57 (March 30, 2025
17 deadline to change claims or parties), she must both properly notice the motion and

18
19 *Honda Idle Stop Litig.*, 2024 WL 5265401 (C.D. Cal. Nov. 22, 2024), addressed a
20 named plaintiff excluded from the class definition certified by the Court. *Fishon v.*
21 *Premier Nutrition Corp.*, 2022 WL 958378 (N.D. Cal. Mar. 30, 2022), addressed
22 substitution where the class representative’s conduct in another litigation implicated
23 credibility. *Patton v. Experian Data Corp.*, 2019 WL 13034866 (C.D. Cal. Jan. 22,
24 2019), concerned a plaintiff withdrawing before certification for health reasons
25 where the Court already determined she had valid claims. *Dean v. United of Omaha*
26 *Life Ins. Co.*, 2008 WL 7611369 (C.D. Cal. Oct. 14, 2008), disqualified a plaintiff as
27 atypical because of unique defenses. *Nat’l Fed’n of the Blind v. Target Corp.*, 582 F.
28 Supp. 2d 1185 (N.D. Cal. 2007), addressed substitution when the initial named
plaintiff could not prove his ADA claim. *In re Lidoderm Antitrust Litig.*, 2017 WL
679367 (N.D. Cal. Feb. 21, 2017), also did not involve arbitration. The rest of her
cases *denied* substitution. *E.g., Myers v. Intuit, Inc.*, 2018 WL 2287425 (S.D. Cal.
May 18, 2018) (denying substitution); *Velazquez v. GMAC Mortg. Corp.*, 2009 WL
2959838 (C.D. Cal. Sept. 10, 2009) (same); *Miller v. Mercedes-Benz USA LLC*,
2009 WL 1393488 (C.D. Cal. May 15, 2009) (same); *Sanchez v. Wal Mart Stores,*
Inc., 2009 WL 2971553 (E.D. Cal. Sept. 11, 2009) (same).

1 seek to modify the scheduling order under Rule 16. *Johnson v. Mammoth*
2 *Recreations, Inc.*, 975 F.2d 604, 608–09 (9th Cir. 1992) (failure to seek scheduling
3 order modification justifies denying motion); *Johnson v. City of Los Angeles*, 2020
4 WL 20848619, at *1 (C.D. Cal. Feb. 25, 2020) (Klausner, J.) (scheduling order
5 modification required to amend complaint or add parties after deadline).

6 **IV. WALMART’S MOTION SHOULD BE GRANTED.**

7 **A. The Court Should Clarify That the Order Decertified the Classes.**

8 As the Motion explains, the Court may clarify its arbitration Order to reflect
9 the necessary implication of decertification given that the sole class representative
10 cannot litigate her claims. Mot. 14–15. Ms. Golikov argues in Opposition that the
11 claims of the classes persist even if the named representative can no longer represent
12 the class. Opp’n at 2–3. But (a) as explained *supra* at II.A., Ms. Golikov’s claims
13 were *invalid from the start*, not mooted after the fact, and thus certification was not
14 proper in the first place; and (b) unlike the cases she points to, Ms. Golikov is
15 contractually prohibited from continuing given her agreement to arbitrate and the
16 class action waiver; thus, not “adequate.” Opp’n 5.

17 **B. The Court Should Decertify the Classes.**

18 Absent clarification, decertification offers the only proper path forward. In
19 Opposition, Ms. Golikov confuses the legal standard. But as the “party seeking to
20 maintain class certification,” *Ms. Golikov* “bears the burden of demonstrating that
21 the Rule 23 requirements are satisfied, even on a motion to decertify.” Mot. 16; *see*
22 *Lambert v. Nutraceutical Corp.*, 870 F.3d 1170, 1182 (9th Cir. 2017); *Marlo v.*
23 *UPS, Inc.*, 639 F.3d 942, 947 (9th Cir. 2011) (“as to the class-decertification issue[]
24 ‘[t]he party seeking class certification[,] bears the burden’ of meeting Rule 23). She
25 cites district court cases that essentially disregard Ninth Circuit authority. Opp’n 8.

26 But even under her proposed legal standard, “decertification is warranted”
27 here because it *is* “tak[ing] place after some change, unforeseen at the time of class
28 certification, that makes alteration of the initial certification decision necessary.” *In*

1 *re Myford Touch Consumer Litig.*, 2018 WL 3646895, at *1 (N.D. Cal. Aug. 1,
2 2018). She pretends the recent arbitration Order does not matter because arbitration
3 was raised generally in connection with the class certification *briefing*. But the class
4 certification *order* did not mention, let alone decide, any arbitration-related issue.
5 Dkt. 62. And the Court’s Order finding arbitration and waiver fundamentally
6 changes this case because (1) the sole class representative cannot litigate her claims
7 in Court, (2) her circumstances are the same as an unknown number of class
8 members, and only individualized inquiries resolve those fact-intensive issues.

9 **1. Ms. Golikov Cannot Represent the Class.**

10 Ms. Golikov does not claim that she is typical or adequate to represent the
11 actual certified classes in this case, nor attempt to address the case law disqualifying
12 class representatives differently situated from a class with respect to arbitration.
13 Mot. 17–18. Rather, she asks to change the definition of the certified classes to
14 include her. Opp’n 13. The Court should reject this request for the reasons above.

15 But redefinition would not solve the problem anyway. Even if the class is
16 improperly redefined to those that made brick-and-mortar purchases, *Ms. Golikov’s*
17 *alleged claims are based solely on online purchases*, as the Court ruled. Order 3 (“In
18 the FAC, Plaintiff consistently refers to her November 14, 2021 purchase of
19 avocado oil. She does not mention or assert any claims based on any other
20 purchases. . . . Plaintiff cannot retroactively base her claims on a different purchase
21 that was never mentioned in the FAC.”). She is subject to unique defenses: waiver
22 and arbitration. *Williams v. Warner Music Grp. Corp.*, 848 F. App’x 284, 285 (9th
23 Cir. 2021) (plaintiffs “atypical because two unique defenses applied”).³

24 _____
25 ³ Ms. Golikov cites *Johnson v. Walmart Inc.*, 57 F.4th 677 (9th Cir. 2023), for
26 the proposition that the online terms do not apply to her in-store purchase of the
27 same product. As explained in the motion to compel arbitration, Dkt. 72 at 5, 7–10,
28 *Johnson* irrelevantly held that an arbitration agreement governing a purchase of a
product (tires online) does not apply to a separate transaction for the *service* of that
product (maintenance at a Walmart Auto Care Center)—a service governed by an
entirely separate service agreement that lacked an arbitration agreement. *See*

1 **2. Class Counsel Cannot Represent the Class.**

2 The Motion details that class counsel is inadequate where they make
3 misrepresentations and attempt to represent disparate interests within the class. Mot.
4 18–21. Class counsel tries to explain away the confusion they caused by alleging
5 Ms. Golikov made her purchase “from a Walmart store.” Opp’n 13–14; FAC ¶ 6,
6 26. But the Court already determined she “did not indicate that she had purchased
7 the avocado oil online,” that the Complaints pleaded only one in-store purchase and
8 could not proceed based on other purported purchases “that w[ere] never mentioned
9 in the FAC,” and Walmart was reasonable for presuming “that opposing counsel
10 [wa]s not misrepresenting the facts.” Order 3–4. Class counsel does *not* dispute they
11 knew Ms. Golikov’s purchase was made online before this case was filed, Dkt. 82-5
12 (receipt for online purchase printed days before filing of the Complaint), but
13 continued asserting this fact was fairly conveyed by the allegation that the purchase
14 was made “from a Walmart store.” Dkt. 69 at 5–6. Class counsel digs an even
15 deeper hole by suggesting that they “expressly characterized” her as both an online
16 and in-store purchaser in their reply in support of the Motion for Class Certification.
17 Opp’n 14. Yet, her class certification reply included only the argument that the
18 online arbitration agreement and class waiver do not apply to in-store purchases,
19 without acknowledging she bought online. Dkt. 51 at 6–7. The continued lack of
20 candor further undermines adequacy.

21 The Opposition passively argues no conflict of interest exists between Ms.

22 _____
23 *Johnson*, 57 F.4th at 683 (“Where two contracts are ‘separate,’ ‘the lack of an
24 arbitration clause means disputes over the agreement are not subject to
25 arbitration.’”). Here, by contrast, the arbitration agreement indisputably applies to
26 her purchase of Great Value Avocado Oil, the transaction for which arose from the
27 same agreement containing the arbitration provision and class waiver. In ruling on
28 the Motion, the Court rejected Ms. Golikov’s arguments because, as explained
above, she pleaded claims solely based on her online purchase, made under one
contract and arbitration agreement. Order 3; *cf. Johnson*, 57 F.4th at 683 (“the proof
Johnson requires to establish his underlying claim . . . depends exclusively on the
terms of the Service Agreement,” which lacked an arbitration agreement).

1 Golikov and remaining absent class members because “there can be no class claims
2 for online purchases.” Opp’n 14. As predicted, class counsel throws online
3 purchasers—including *their own named-plaintiff client, Ms. Golikov*—overboard to
4 try to salvage the class action. Mot. 20. Class counsel ignores their duties to the
5 currently certified classes, and does not even pretend like they will look after their
6 interests (or make arguments on their behalf to seek to remain in this class action).

7 **3. Numerosity Is Not Met.**

8 Ms. Golikov put no evidence before the Court regarding how many class
9 members purchased avocado oil exclusively from stores as opposed to online. Mot.
10 21. Ms. Golikov’s Opposition merely restates the “evidence” submitted in
11 connection with the original Motion for Class Certification regarding *total* sales and
12 stores. Opp’n 14–15. But that says nothing about how many class members may
13 actually proceed in this case; she simply ignores the cases cited in Walmart’s
14 Motion that explain counting disqualified class members with arbitration
15 agreements is insufficient to establish numerosity. Mot. 21.

16 **4. Commonality and Predominance Are Not Met.**

17 The Motion collected cases finding no commonality or predominance when
18 individualized inquiries are necessary to determine whether class members agreed to
19 arbitrate or waive class treatment. Mot. 21–24. Ms. Golikov pretends these issues
20 were addressed in the original certification order. Opp’n 5. Although the parties
21 argued hypothetically about how the online arbitration agreement could apply, the
22 Court’s order did not address the arbitration issues in any respect.

23 Ms. Golikov also argues that a redefined class—involving only in-store
24 purchasers—would solve the commonality and predominance problems. Opp’n 11.
25 ***The argument fails because in-store purchasers may still be bound by arbitration***
26 ***agreements and class action waivers.*** First, as explained in the Motion (and ignored
27 in the Opposition), in-store purchasers are required to arbitrate in many
28 circumstances, including if they used the Walmart Pay app. Mot. 22–23. The class

1 may also include those, like Ms. Golikov, who purportedly purchased both in-store
2 and online, requiring factual determinations of purchase history and the extent to
3 which they are bound. *Second*, the Court would also have to determine, as to each
4 class member, who has standing to pursue their claims in Court and any other
5 individual defense each might have to arbitration. *Id.* *Third*, the delegation clause in
6 the arbitration agreements means an arbitrator likely must make these threshold
7 determinations. Mot. 23–24. Ms. Golikov does not even address delegation.

8 The Opposition does not otherwise address the issue of commonality or
9 predominance, relying only on Ms. Golikov’s citations from class certification
10 involving discrete subsets of *absent* class members bound by arbitration, which
11 subsets (unlike here) may be excised from the broader class. No surprise. With the
12 inextricable mix of waiver- and arbitration-bound members within the class, the
13 substantial “[d]issimilarities within the proposed class” will “impede the generation
14 of common answers,” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011), as
15 the Court will have to determine whether each class member agreed to arbitration
16 and class waiver—whether through online purchase, online account creation, or use
17 of Walmart Pay when purchasing in a physical Walmart store. *Sanchez v. Valencia*
18 *Holding Co., LLC*, 61 Cal. 4th 889, 911 (Cal. 2015) (analysis of class waiver is
19 “highly dependent on context”); *Conde v. Sensa*, 2018 WL 4297056, at *10–11
20 (S.D. Cal. Sept. 10, 2018) (determination of “which of the class members may be
21 subject to the arbitration provision” defeats predominance).

22 **5. Superiority Is Not Met.**

23 Last, Ms. Golikov does not address the cases finding lack of superiority based
24 on the need to sort individual arbitrability and class waiver issues. Mot. 24–25;
25 Opp’n 15. She points only to affirmative requests not properly before the Court.

26 Dated: July 21, 2025

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By: /s/ Jacob M. Harper

For Defendant Walmart Inc.

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CERTIFICATION

The undersigned counsel of record for Walmart Inc. certifies that this brief contains 3,540 words, which complies with the word limit of L.R. 11-6.1 and the Court’s Standing Order.

/s/ Jacob M. Harper
Jacob M. Harper